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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,663	12/20/2000	Luigi Rivoltella	33819B003	4261
441	7590	12/03/2003	EXAMINER	
SMITH, GAMBRELL & RUSSELL, LLP 1850 M STREET, N.W., SUITE 800 WASHINGTON, DC 20036			ARNOLD III, TROY G	
		ART UNIT	PAPER NUMBER	
		3728		

DATE MAILED: 12/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application N .	Applicant(s)
	09/739,663	RIVOLTELLA, LUIGI <i>ar</i>
	Examiner Troy Arnold	Art Unit 3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 September 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 12-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 12, what exactly is the structure of the second layer? Is it a contiguous tube (of plastic adhered to the first layer) as claimed in line 5 or is it a sheet (of plastic adhered to the first layer) which may be folded over as flaps or manipulated into a tubular shape, as claimed in lines 10-11? Claims 13-15 all modify this unclear state. In claim 17, there is no antecedent basis for "the first component."

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spiegel et al. Spiegel teaches all the limitations of claim 12 except the thin film having a

longitudinal cut so as to form a flap. It would have been obvious to one of ordinary skill in the art at the time the invention was made to partially cut the sleeve 286 in a longitudinal direction in order to aid removal of a retained item. Regarding claim 13, making such a cut would form two foldable flaps. Regarding claims 14 and 15, the two (triangular) flaps formed by a cut could be folded over each other, so that they juxtapose or overlap one another. Regarding claim 16, it is clear that one could fold both the first layer 282 and the second layer 286 of Spiegel together, and that they are attached.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spiegel in view of Ferrero. Spiegel teaches all the limitations of claim 17 except a longitudinal weakness line in the second layer. (See Fig 9a where Spiegel teaches a longitudinal weakness 258 line in the first layer along which it can be torn.) Ferrero teaches a weakness line 2a in a food product package which serves the same function as that of the instant invention. It would have been obvious in view of Ferrero to one of ordinary skill in the art at the time the invention was made to incorporate a weakness line, longitudinal or lateral, into the second layer 286 of Spiegel for the purpose of making a retained product easier to remove by the consumer.

Given the 112-2 rejections above, all art rejections are made inasmuch as the claims are understood.

### ***Response to Arguments***

Applicant's arguments filed 22 September 2003 have been fully considered but they are not persuasive. In the middle of page 3, Applicant is not understood; claims 7,

9 and 11 are withdrawn and not rejected in the Office Action, paper No. 9. Regarding claim 12, it is unclear exactly the state of the plastic second layer of the instant invention, as noted in the 112-2 rejection above – is it an integral, unbroken tube / cylinder, a tube with a partial slit, or a tube slit its entire length, in which case it becomes effectively a sheet? Regarding the remarks in the middle of page 5, Spiegel teaches all the limitations of claim 12 as modified except the cut, as noted above. Applicant is arguing limitations / capabilities / intended use scenarios which are not in the claims. Contrary to the remarks at the bottom of page 5 and page 6, it is submitted that not only does making a cut in the tube of Spiegel not destroy the reference, it would have been obvious to make such a cut in order to make removing a retained item easier for the consumer. The cut could be only  $\frac{1}{4}$  long which would not affect the sleeve's ability to retain the item in any way, but would create a "tear starter" for a consumer.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Arnold whose telephone number is 703-305-0621. The examiner can normally be reached on Tuesday-Thursday, 9:30-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-0302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Troy Arnold  
Examiner  
Art Unit 3728

TGA  
11/18/03



Mickey Yu  
Supervisory Patent Examiner  
Group 3700